

Timing and Consistency in Employee Discipline

Working Together

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A recent case decided by the Connecticut Appellate Court illustrates the importance of timing and consistency in administering employee discipline. In *Barbee v. Sysco Connecticut, LLC*, an opinion released on April 28, 2015, the plaintiff, a 16-year employee, was a supervisor who processed returns at a wholesale food distributor's warehouse. According to the plaintiff, it was standard practice that returned products which could not be re-sold were discarded, distributed to employees, or kept by the supervisor herself.

But then the plaintiff made a workers compensation claim and took two weeks off for treatment. On the day that she returned to work, she was suspended (and later terminated) for removing a returned, nonsaleable product from the warehouse. The employer gave "unauthorized removal" of damaged products as the reason for termination, even though the plaintiff had never been disciplined or reprimanded in any manner for removing damaged returned products in the past, and understood it to be a common practice among employees.

The plaintiff sued, claiming that her termination was in retaliation for making the workers compensation claim. Although the trial court granted summary judgment for the employer, the Appellate Court reinstated the case for trial, holding that the plaintiff had offered sufficient evidence of a prima facie case of retaliation. In particular, the Court noted the contradictory evidence of the practice at the warehouse with respect to returned products, and the "temporal congruence" between the plaintiff's return to work from a workers compensation absence, and discipline on the same day for violation of a workplace policy that might not have been routinely enforced.

The Appellate Court concluded that the employer's offered explanation might in fact be masking a retaliatory purpose. Assuming the employer was acting in good faith, it seems to have been oblivious to the issues raised by the timing and lack of consistency in administering this policy, and will now have to defend its actions at trial. The lesson for employers generally is to take a cautious approach to discipline or termination of any employee who has just made a workers compensation claim; at the least, not to suspend an employee on the very day of her return from a workers compensation absence. If discipline is warranted, employers must be sure that it is on the basis of a uniformly applied and reasonable workplace rule.

Posted in Appellate, Termination, Workers' Compensation

Tags: Retaliation

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